IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/03/2003

CORAM

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION No. 20341 of 1998

S.Gandhimathi ..Petitioner

-Vs-

1. The Dy.Registrar of Cooperative Society
(Milk) Tirunelveli

2. The Chairman/District Collector
Tirunelveli Dist.,Cooperative Milk
Producers' Union
Reddiyar Patti Road, Tirunelveli-7

3. The Managing Director,
Tirunelveli Dist.,Cooperative Milk
Producers' Union
Reddiyar Patti Road, Tirunelveli-7

4. The Managing Director
Tamil Nadu Cooperative Milk Producers
Federation Ltd., Madhavaram Milk Colony,
Chennai-51 ..Respondents

For petitioner :: Mr.Saravanakumar for
M/s.Subramaniam and
Sasikala Subramaniam

For respondent :: Mrs.Rani Selvam G.A.,
Mr.G.Sankaran for R3
Mr.S.Subbiah for R.4

Petition filed under Article 226 of The Constitution of India praying for the issue of a writ of certiorarified mandamus as stated therein.

:O R D E R

The petitioner has prayed for the issue of a writ of certiorarified mandamus calling for the impugned proceedings of the third respondent in Na.Ka.NO.592/A1/97-2, dated 18.9.1998, quash the same and direct the respondents to appoint the petitioner in any suitable post on compassionate

grounds.

2. Heard Mr.Saravanakumar, learend counsel for Mr.Subramaniam for the petitioner, Mrs.Rani Selvan, Government Advocate for respondent Nos.1 and 2, Mr.G.Sankaran, learned counsel appearing for the third respondent, and Mr. S.Subbiah, learned counsel appearing for the 4th respondent. With the consent of counsel on either side, the writ petition itself is taken up for final disposal.

3. According to the petitioner the petitioner's husband late A. Subramaniam was engaged as a casual labourer in the third respondentMilk Producers Federation for more than four years along with other casual labourers. All the casual labourers approached the Deputy Chief Inspector of Factories who by order dated 4.3.1996 directed regularisation of all the 55 casual labourers including the petitioner's husband. The petitioner's husband passed away on 16.1.1997 due to heart attack and the petitioner was granted Provident Fund as well as insurance amount. As the petitioner's husband died in harness, she submitted an application for appointment of her son on compassionate ground immediately and followed it with reminders. The first respondent by the impugned order dated 23.10.1998 rejected the request on the sole ground that the petitioner's husband was not a permanent employee and therefore the petitioner is not eligible to seek for compassionate appointment of her son. According to the petitioner by virtue of the orders passed by the Deputy Chief Inspector of Factories, on 4.3.1996, the petitioner's husband and other casual labourers deemed to have been regularised on their completing 480 days and merely because formal orders have not been issued by the respondents till the death of her husband, her husband cannot be treated as a casual alone. The petitioner further contends that treating her husband as casual labour on the death of death on 16.1.1997 is a misconception and runs counter to the directions issued by the Deputy Chief Inspector of Factories under the Tamil Nadu Industrial (Conferment of permanent status to workmen) Act. Therefore the petitioner seeks to quash the impugned communication and consequently seeks for a mandamus to provide compassionate appointment.

4. The first respondent filed a counter setting out the details and contended that being a casual no question of compassionate appointment would arise at all. The first respondent further contended that the petitioner's husband was engaged as a casual on 16.4.1993. After his completing 480 days of service within a period of two years along with others similarly placed casual labourers, proposal was submitted for regularisation to the 4th respondent and pending scrutinisation of such proposal the petitioner's husband passed away on 1 6.1.1997 and hence the petitioner's husband having not been regularised, the petitioner cannot seek for employment on compassionate ground for her son as per the existing scheme. It is further contended that the Deputy Commissioner of Labour passing an order on 4.3.199 6 is not acceptable for the reason that the proposal for regularisation of services of the casual labourers is pending with the third respondent. Hence the said order has not been complied with.

5. The third respondent has filed a counter taking an identical stand contending that only if a regular employee in the time scale of pay died in

harness, legal heirs of the deceased employee can be considered for appointment on compassionate grounds. Since the petitioner's husband was a casual labourer working on daily wages at the time of his death, her request for compassionate appointment cannot be complied with and it has been rightly rejected. The petitioner has received Rs.60,000/= under various benefits including Group Insurance, Provident Fund etc., It is represented that none of the casual labourers similarly placed by the petitioner's husband were regularised so far and therefore the petitioner is not entitled to the relief prayed for.

6. The only contention that arise for consideration is:
Whether the petitioner is entitled for issue of a writ of certiorarified mandamus directing the respondent to provide for appointment or compassionate appoint as prayed for?

7. Concedingly, the petitioner's husband was initially engaged as a Casual Labourer along with 58 others with effect from 16.4.1993. It is further admitted that the petitioner's husband late Subramaniam has completed 480 days of service within a period of 2 years. It is also admitted that necessary proposals have been sent by the third respondent to the Commissioner for Milk Production for regularisation of the services of the said Subramaniam and others.

8. The deceased Subramaniam along with 53 others moved the Deputy Chief Inspector of Factories, the authority constituted under the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, 1981. After contest by order dated 4.3.1996, the said authority while exercising powers under Section 3 of the said Act directed that all the 54 workman except one Gopal are entitled for conferment of permanent status on their completing 480 days of service and direction has been issued in this respect. The said proceedings of the Deputy Chief Inspector of Factories passed on 4.3.1996 has reached finality and it has not been challenged by any of the respondents. As the said proceedings not having been challenged, it is binding on the respondents.

9. The effect of which would be the deceased Subramaniam is deemed to have been reegularised and became a permanent employee. The State Government also by G.O.(Per)NO.148, Animal Husbandry & Fisheries (2) Dept., dated 18.9.2000 issued directions f egularisation of all the 54 employees excepting one Gopal. In terms of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to workman) Act, 1981, there is no dispute that the 4th respondent is an employee and it is an industrial establishment as defined in the Act and that the deceased Subramaniam was a workman as defined in Section 2 of the Factories Act. Section 3 of the Act provides that every workman who is in continuous service for a period of 480 days within a period of 24 calendar months in an industrial establishment shall be made permanent.

10. Therefore, it follows that on the deceased Subramaniam completing 480 days within a period of 24 calendar months, which factum is not in dispute, his service shall be deemed to have been regularised on his completing 480 days within a period of 24 calendar months the deceased

Subramaniam has become an employee of the establishment and he ceased to be a casual. Thus becoming an employee of the establishment does not depend upon any further order or proceedings of regularisation. It is a statutory benefit conferred on the deceased and a direction in terms of Section 3(1) which operates on the workman concerned completing 480 days and it does not call for or depend upon any subsequent order of regularisation.

11. Even if no order of regularisation is passed, he is deemed to have been regularised as per the statutory direction. In terms of the said provision, the competent authority namely Deputy Chief Inspector of Factories has issued a direction which would mean that on the deceased Subramaniam completing 480 days he has become an emloyee who is regularised and there cannot be any quarrel, nor there is any requirement for the respondent to pass any order in this respect. Hence, it follows that the service of the deceased Subramaniam during his life time itself has been regularised and no formal orders are required by any of the respondents. It is not as if the formal orders are required for conferment of permanent status.

12. In this case the deceased and 53 others approached the authority constituted under the Act who has also issued directions. Merely because no formal orders has been issued, it cannot be contended by the respondents that the said Subramaniam is still a casual employee and he died as a casual worker. Such a contention advanced by the respondent cannot be sustained.

13. A Division Bench of this Court, in Metal Powder Co.Ltd., and Anr., vs. State of Tamil Nadu reported in 1985 (2) LLJ page 376, held thus:-

"13. Now, when we come to S.3(2) of the Act, as we have already pointed out, it is a concept which has not been found incapable of implementation at any time and has stood the test of time since 1947. Not only is the concept of "continuous service" found in the Industrial Disputes Act, 1947, but we find the same concept in the Payment of Gratuity Act, 1972. In S.2Cl(c), "Continuous Service" has been similarly defined. It reads: "Continuous Service" means uninterrupted service and includes service which is interrupted by sickness, accident, leave, lay-off, strike or a lock out or cessation of work not due to any fault of the employee concerned, whether such uninterrupted or interrupted service was rendered before or after the commencement of the Act."

Explanation I to the above definitions more or less similar to S.25-B(2) of the Industrial Disputes Act. A careful reading of S.3(2) o the Act would indicate that the emphasis is not on the number of days on which the workman has worked, but the emphasis is on the subsisting contract of employment between the employer and the workman. When the section refers to service, it refers to the contract of employment being subsisting, and the various events on account of which service can be interrupted would indicate that each one of them, except non employment and discharge, for the time being, does not result in snapping the ties between the employer and the workman.....Each one of the above events contemplate a subsisting contract of employment and a subsisting relationship of employee and employer, and when the Legislature in it's wisdom has thought fit to bestow the status of permanency on a workman

who has been in continuous service, in which the period of absence on account of the reasons given sub-s(2) of S.3 is also included, then it is difficult to see how such a legislation can be open to challenge on the ground of vagueness, or on the ground of unreasonableness. As a matter of fact, the concept of continuous service is to be originally found in the Factories Act of 1934. S.49-B of the 1934 Factories Act provided:

"Every worker who has completed a period of twelve months' continuous service in a factory shall be allowed, during the subsequent period of twelve months, holidays for a period of ten, or if a child, fourteen consecutive days, inclusive of the day or days, if any, on which he is entitled to a holiday under sub-s(1) of S.35...

Explanation- A worker shall be deemed to have completed a period of twelve months' continuous service in a factory notwithstanding any interruption in service during those twelve months brought about by sickness, accident or authorised leave not exceeding ninety days in the aggregate for all three or by a lock out or by a strike which is not an illegal strike, or by intermittent periods of involuntary unemployment not exceeding thirty days...."

It is therefore almost over fifty years that the concept of continuous service has been incorporated in statutes."
xx xx xx xx xx
15."....under S.3(1) of the Act also it would not be enough for the workman to enable him earn the status of permanent workman only to show that he has been in continuous service for a period of 480 days. He has also further to show that he has been in service for 24 calendar months before he claims the benefits of the Act."

14. By applying the rule of fiction the deceased is deemed to have been regularised. In terms of The Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act, the deceased ceased to be a casual and deemed to be a regular employee with permanent status on his completing 480 days and on the date of death he was a permanent employee and therefore his son for whose benefit the writ petition has been filed is entitled to be considered for appointment on compassionate ground. The contention that the deceased always remained a casual labourer as no orders have been passed even though proposal was sent for regularisation cannot be sustained.

15. In the circumstances, the impugned communication is quashed and the third respondent is directed to consider the petitioner's request for compassionate appointment and provide employment under the scheme within a period of four months from the date of communication of this order or when the next vacancy arises or on retirement of an employee.

Writ Petition is allowed. No costs.

Internet:yes
Index:yes

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Copy to:-

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